

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-5217-00

SHwang

date: JAN 22 2001

to: Chief, Examination Division, Southern California District
SB/SE: Area 14, Territory 1, Group 1
Attn: Mary Ann Smith, Group Manager; Rose Koczergo, Agent

from: Sandy Hwang, Attorney
June Y. Bass, Associate Area Counsel (LMSB)

subject: [REDACTED]

TIN: [REDACTED]

Earliest Statute of Limitation Date: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is in response to your request for our advice regarding the language to be used in the restricted consents for [REDACTED] (" [REDACTED] "), [REDACTED] (" [REDACTED] "), and [REDACTED] (" [REDACTED] "), respectively.¹

¹ We understand that a [REDACTED] partnership interest in [REDACTED] was sold in [REDACTED]. This sale gives rise to a technical termination of the partnership under I.R.C. § 708(b).

You are currently auditing the [REDACTED] returns filed by [REDACTED], [REDACTED], [REDACTED] and [REDACTED], respectively. The only issues under audit relate to the taxpayers' sale of the underlying assets of the [REDACTED] (the "[REDACTED]").² The issues from the sale of the [REDACTED] include the characterization of gain from the sale, valuation of intangible assets, correct amount of gain, and proper allocation of purchase price.³ The earliest statute of limitations for assessment expires on [REDACTED]. Due to the lack of time, you need to extend the time for assessment. However, the taxpayers are only willing to give restricted consents.

To accomplish your purpose, we recommend the restrictive language below. The restricted language on the restricted consent forms should be placed in the space between the printed text of the form and the first signature line. However, if space is limited, the restricted language can be placed on an

We are not rendering advice herein regarding the validity of the filed partnership return by [REDACTED] for purposes of controlling the statute of limitations.

Please be advised that the use of the restricted language suggested herein will preclude Exam from making any adjustments relating to the termination of the [REDACTED] partnership. In the future, we will render advice regarding the treatment of the filed return for purposes of rendering the FPAA.

² The sale involved many tangible and intangible assets including the Licensing Agreements (under which local radio stations may broadcast the [REDACTED] in exchange for advertising time), the [REDACTED] Sales Representation Income Agreement (under which one of the related entities had received a percentage of advertising revenue), the program production materials, the employment agreement, supply inventory, office machines, furniture and fixtures, computer equipment, promotional materials, going concern value, and the non-competition agreement.

³ During the audit of this case, it was determined that the stated values of some of the intangible assets of the [REDACTED] may be incorrect. It appears that certain assets were overvalued and other may have been undervalued. You are currently in the process of obtaining an independent expert to value some of the assets. Further, the gain attributable to some of the assets was not correctly characterized by the taxpayers. Until proper valuation of the assets and additional information are obtained, the case can not be closed.

attachment and "SEE ATTACHED STATEMENT" should be placed in the space between the printed text and the first signature line of the restricted consent forms.

In re: [REDACTED]: a C-Corporation

The restricted language on the Form 872-A should read as follows:

The amount of any deficiency, penalty, addition to tax and/or interest assessment shall be limited to that resulting from any adjustment to any item(s) of income, deduction, credit, gain or loss (or the character or timing thereof) relating to the sale of any tangible and/or intangible assets (including, but not limited to, inventory items and other fixed assets) to [REDACTED] and/or its parent, [REDACTED], during [REDACTED], including any consequential changes to other items based on such adjustment(s).

As used herein, the term "adjustment" means any change or changes to said item(s) whether reported or not reported on the return. The change can be in amount, taxable status, allocation, character, etc.

As used herein, the term "consequential changes" means any direct or indirect effect.

A footnote limiting the application of I.R.C. § 6511(c) should be added to the consent stating, "The provisions of section 6511(c) of the Internal Revenue Code are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement."

In re: [REDACTED]: a TEFRA Partnership

The restricted language on the Forms 872-O should read as follows:

The amount of any deficiency, penalty, addition to tax and/or interest assessment shall be limited to that resulting from any adjustment to any item(s) of income, deduction, credit, gain or loss (or the character or timing thereof) relating to the

sale of tangible and intangible assets (including, but not limited to, licensing and distribution rights, the [REDACTED] Sales Representation Agreement(s), the [REDACTED] Right of First Refusal Agreement, other fixed assets, and promotional materials) sold to [REDACTED] and/or its parent, [REDACTED], during [REDACTED], including any consequential changes to other items based on such adjustment(s).

As used herein, the term "adjustment" means any change or changes to said item(s) whether reported or not reported on the return. The change can be in amount, taxable status, allocation, character, etc.

As used herein, the term "consequential changes" means any direct or indirect effect.

A footnote limiting the application of I.R.C. § 6511(c) should be added to the consent stating, "The provisions of section 6511(c) of the Internal Revenue Code are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement."

In re: [REDACTED]: a TEFRA Partnership

The restricted language on the Forms 872-0 should read as follows:

The amount of any deficiency, penalty, addition to tax and/or interest assessment shall be limited to that resulting from any adjustments to any item(s) of income, deduction, credit, gain or loss (or the character or timing thereof) relating to the sale of tangible and intangible assets (including, but not limited to, studio equipment and other assets, program production materials, other fixed assets, the [REDACTED]'s Talent Contract or employment contract, the [REDACTED] Sales Representation Agreement, the [REDACTED] Non-Competition Agreement, going concern, licensing and distribution rights, and licensing rights) to [REDACTED] and/or its parent; [REDACTED]

[REDACTED], during [REDACTED], including any consequential changes to other items based on such adjustment(s).

As used herein, the term "adjustment" means any change or changes to said item(s) whether reported or not reported on the return. The change can be in amount, taxable status, allocation, character, etc.

As used herein, the term "consequential changes" means any direct or indirect effect.

A footnote limiting the application of I.R.C. § 6511(c) should be added to the consent stating, "The provisions of section 6511(c) of the Internal Revenue Code are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement."

In re: [REDACTED]: Non TEFRA S-Corporation

The restricted language on the Form 872-A for the shareholder, [REDACTED], should read as follows:

The amount of any deficiency, penalty, addition to tax and/or interest assessment shall be limited to that resulting from any adjustments to the taxpayer's distributive share of any item(s) of income, deduction, credit, gain or loss (or the character or timing thereof) from [REDACTED] relating to the sale of tangible and intangible assets (including, but not limited to, studio equipment and other assets, program production materials, other fixed assets, the [REDACTED]'s Talent Contract or employment contract, the [REDACTED] Sales Representation Agreement, the [REDACTED] Non-Competition Agreement, going concern, licensing and distribution rights) by [REDACTED] to [REDACTED] and/or its parent, [REDACTED], during [REDACTED], including any consequential changes to other items based on such adjustment(s).

As used herein, the term "adjustment" means any change or changes to said item(s) whether

reported or not reported on the return. The change can be in amount, taxable status, allocation, character, etc.

As used herein, the term "consequential changes" means any direct or indirect effect.

A footnote limiting the application of I.R.C. § 6511(c) should be added to the consent stating, "The provisions of section 6511(c) of the Internal Revenue Code are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement."

This advice has been coordinated with the national office. Please call Sandy Hwang at (949)360-3432, if you have any questions.